

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STEVE DOUGLAS GARTIN,

Plaintiff,

v.

No. CV 07-0385 WJ/LAM

CHAVEZ COUNTY BOARD OF
COMMISSIONERS, et al.,

Defendants.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION¹

PROPOSED FINDINGS

THIS MATTER is before the Court on Defendants City of Roswell and Roswell Police Department's (hereinafter "Roswell Defendants") *Motion to Strike Plaintiffs' Supplemental Complaints or, Alternatively, Motion to Dismiss filed by City of Roswell and Roswell Police Department* (Doc. 41), filed on October 22, 2007. No response to this motion has been filed.² Defendants filed *Notice of Completion of Briefing on the City of Roswell's and Roswell Police Department's Motion to Strike Plaintiffs' Supplemental Complaints* (Doc. 50) on November 13, 2007. For the reasons set forth below, the undersigned recommends that the *Motion to Strike*

¹Within ten (10) days after a party is served with a copy of these Proposed Findings and Recommended Disposition, that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections to such proposed findings and recommended disposition. A party must file any objections with the Clerk of the United States District Court within the ten-day period allowed if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.

²"The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ. 7.1(b). Thus, pursuant to this local rule, the Court could deem Plaintiff's failure to file and serve a timely response as consent to grant the motion and could grant the motion on that basis. However, the Court prefers to consider the motion on substantive grounds because the interests of justice will be better served by doing so.

Plaintiffs' Supplemental Complaints or, Alternatively, Motion to Dismiss filed by City of Roswell and Roswell Police Department (Doc. 41) be GRANTED. In deciding this matter, the Court has considered the foregoing motion, the record of this case and relevant law.

Plaintiff is a prisoner who is proceeding *in forma pauperis*.³ He filed this action on April 19, 2007, pursuant to 42 U.S.C. §§ 1983, 1985 and 1986, and has filed the following complaints in this case: (1) ***Civil Rights Complaint with Jury Demand Pursuant to 42 U.S.C.A. §§ 1983, 1985 & 1986 (Doc. 1)***, filed April 19, 2007; (2) ***Complaint with Jury Demand Pursuant to 42 U.S.C.A. §§ 1983, 1985 & 1986 R.S. 1979 (Doc. 2)***, filed April 20, 2007; (3) ***Civil Rights Complaint with Jury Demand Pursuant to 42 U.S.C.A. §§ 1983, 1985, 1986 & R.S. § [sic] 1979 (Doc. 5)***, filed April 27, 2007; (4) ***Amended Complaint Pursuant to 42 U.S.C.A. §§ 1983, 1985, 1986 & R.S. § [sic] 1979 and 18 U.S.C.A. §§ 1961, 1962 and 1964 (Doc. 10)***, filed May 4, 2007; (5) ***Supplemental Civil Rights Complaint (Doc. 14)***, filed June 29, 2007; (6) ***Supplemental Class Action Civil Rights Complaint Adding Plaintiffs and Defendant (Doc. 16)***, filed July 5, 2007; (7) ***Supplimental [sic] Civil Rights Complaint (Doc. 22)***, filed July 13, 2007; (8) ***Supplemental Civil Rights Complaint ~ 7-13-2007 (Doc. 30)***, filed July 18, 2007; and (9) ***Supplemental Civil Rights Complaint ~ 7-17-07 (Doc. 28)***, filed July 25, 2007. Defendants move to strike the following supplemental complaints: (1) ***Supplemental Civil Rights Complaint (Doc. 14)***, filed June 29, 2007; (2) ***Supplemental Class Action Civil Rights Complaint Adding Plaintiffs and Defendant (Doc. 16)***, filed July 5, 2007; (3) ***Supplimental [sic] Civil Rights Complaint (Doc. 22)***, filed July 13, 2007; and

³See ***Memorandum Opinion and Order (Doc. 51)***, at 4, granting Plaintiff's motion for leave to proceed *in forma pauperis*.

(4) *Supplemental Civil Rights Complaint ~ 7-17-07* (Doc. 28), filed July 25, 2007, because they were filed in violation of Fed. R. Civ. P. 15(a).⁴

Under Fed. R. Civ. P. 15(a), a party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend a pleading “only with the opposing party’s written consent or the court’s leave.” See Fed. R. Civ. P. 15(a). Here, Plaintiff has neither received leave of the Court nor consent of opposing parties to file the supplemental complaints that are the subject of the Roswell Defendants’ motion. Accordingly, the Court finds that Plaintiff’s *Supplemental Civil Rights Complaint* (Doc. 14), *Supplemental Class Action Civil Rights Complaint Adding Plaintiffs and Defendant* (Doc. 16), *Supplimental [sic] Civil Rights Complaint* (Doc. 22), and *Supplemental Civil Rights Complaint ~ 7-17-07* (Doc. 28), should be stricken and not considered further.

RECOMMENDED DISPOSITION

For the foregoing reasons, the Court recommends that ***Motion to Strike Plaintiffs’ Supplemental Complaints or, Alternatively, Motion to Dismiss filed by City of Roswell and Roswell Police Department*** (Doc. 41) be GRANTED and that Plaintiff’s *Supplemental Civil Rights*

⁴See *Motion to Strike Plaintiffs’ Supplemental Complaints or, Alternatively, Motion to Dismiss filed by City of Roswell and Roswell Police Department* (Doc. 41), at 1-2. The Court notes that Defendants state that they “incorporate by reference the points, authorities and arguments presented to the Court” in *Defendant Judge Charles C. Currier’s Motion to Strike or, Alternatively, Motion to Dismiss* (Doc. 32), presumably at pages 1-2, and the Court has considered the arguments incorporated by reference from Defendant Currier’s motion in making its recommendation. The Court further notes that this issue was not resolved in the undersigned’s *Proposed Findings and Recommended Disposition* (Doc. 54) filed on December 20, 2007, regarding Defendant Currier’s motion (Doc. 32), because the undersigned recommended granting Defendant Currier’s motion (Doc. 32) on the alternative grounds stated therein.

Complaint (Doc. 14), Supplemental Class Action Civil Rights Complaint Adding Plaintiffs and Defendant (Doc. 16), Supplimental [sic] Civil Rights Complaint (Doc. 22), and Supplemental Civil Rights Complaint ~ 7-17-07 (Doc. 28), should be stricken and not considered further.

Lourdes A. Martinez
HONORABLE LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE